

**Submission to the Committee on the Elimination of Discrimination against Women on *Draft General Recommendation No. 35 on the Gender-related Dimensions of Disaster Risk Reduction in a Changing Climate***

This submission by Dr Gabrielle Simm and Dr Sarah Williams follows the general order of issues raised in the draft General Recommendation. It also raises issues not included in the draft General Recommendation.

**I. Introduction and II. Objective and Scope**

***Scope and definitions***

***'Disaster'***

The scope of the General Recommendation should be clarified through defining and using terms consistently. The draft General Recommendation refers to 'disasters' as separate to climate change (para 2), 'natural disasters' (para 4), 'climate change related disasters' (para 6) and 'situations of disaster in a changing climate' (para 31).

The Committee should align its use of the term 'disasters' with that in the ILC draft articles on the protection of persons in the event of disasters. The draft articles state:

'disaster' means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large -scale material or environmental damage, thereby seriously disrupting the functioning of society.<sup>1</sup>

There are two reasons why the General Recommendation should adopt the definition of a disaster set out in the ILC draft articles. First, the Commentary to the ILC draft articles notes the difficulty of isolating and proving causes of disasters and the undesirability of forcing the victims of disasters to establish their cause, particularly in the case of disasters with multiple causes. Second, even if the ILC draft articles are not adopted as a treaty, they draw on a decade-long extensive study of customary international law on which states and international organisations have had the opportunity to comment. It makes sense for the General Recommendation to use the term 'disaster' consistently with its widespread usage within the UN system and by states.

While the Committee has decided to focus on disasters in a changing climate, broadening the scope of its General Recommendation to disasters more generally would be sensible. It would raise the profile of gender in disaster risk reduction and provide an international standard that could be used by states to measure their progress from a baseline and share successes and best practice with each other. Further, civil society could draw on the standard in advocacy for disaster risk reduction. While the General Recommendation will inform and guide state practice under CEDAW, this Committee is the first to address the

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<sup>1</sup> Draft articles on the protection of persons in the event of disasters, with commentaries, adopted by the International Law Commission in 2016, [ILC Draft Articles] UN Doc A/71/10, art 3(a).

issue of gender in disasters in relation to a binding international treaty commitment, albeit in the form of a non-binding Recommendation.

***Disaster risk reduction or all phases of the disaster cycle?***

While the General Recommendation refers to disaster risk reduction, aspects of it refer to disaster response and recovery. For example, it mentions a heightened risk of violence to women and girls in the aftermath of disaster<sup>2</sup> and an increased burden of caretaking and domestic work for women following disasters.<sup>3</sup> Barriers to women's ability to access justice and claim reparations for losses<sup>4</sup> and ensuring women's equal access to infrastructure and services also relate to disaster recovery rather than risk reduction.<sup>5</sup> It would be helpful for the recommendation to analyse the obligations of states at different stages of the disaster cycle ie risk reduction, preparedness, response and recovery. If the Recommendation is not intended to refer to other stages of the disaster cycle apart from risk reduction, a clear statement to that effect should be included and these references should be removed. Nevertheless, a CEDAW General Recommendation that addresses gender and disaster response would be more comprehensive and provide guidance to states and humanitarian actors that is currently lacking.

***'Gender'***

The term 'gender' as used in the draft General Recommendation is largely a synonym for women. The draft General Recommendation rightly acknowledges the differential impact of disasters on women, girls, boys and men and the differences between different groups of women (para 2). Nevertheless, in other places the Recommendation slips into conflating gender with women.<sup>6</sup> This is disappointing, given that states and CEDAW have previously acknowledged that essential role of men in addressing gender equality. While CEDAW focuses on women, as per its mandate, the draft Recommendation has the potential to influence states and civil society to identify the ways in which men are gendered and how this plays out in disasters. An example of the impact of disasters on men is the tendency noted for men to turn to alcohol and become violent as maladaptive coping strategies in the wake of disasters.

**Gender identity and sexuality**

References to gender identity and sexuality as a marker of a particular sub-group of women are inconsistent. Paragraph 19(a) omits mention of gender identity or sexuality while paragraph 25 (a) is more comprehensive and refers to 'LBTI women' without explaining the acronym. The General Recommendation should refer consistently to gender identity and sexuality as factors that may give rise to discrimination or increase vulnerability in disasters while using the broadest

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<sup>2</sup> Para 5.

<sup>3</sup> Para 24.

<sup>4</sup> Para 31.

<sup>5</sup> Para 42(c).

<sup>6</sup> For example, para 34(b) 'gender related disaster risk reduction and women's participation in climate resilience...'; para 38 alternates between references to 'women' and 'gender' without an apparent distinction between the terms.

and most inclusive terms possible, acknowledging that gender identity and sexuality vary between cultures and societies.

The Committee is to be commended for acknowledging an increase in violence against transgender persons in situations of disaster (para 67). Reference to transgender persons should be introduced earlier, in reference to sexual and gender identity and in relation to intersectional discrimination. It is also important to consider how transgender persons are excluded from disaster risk reduction measures, through failure to include them in early warning systems and disaster preparedness measures, for example, and how pre-existing social marginalisation is amplified in disasters.

#### **IV General Principles of the CEDAW Convention applicable to disaster risk reduction in a changing climate**

##### **C Accountability and access to justice**

The draft General Recommendation seems to assume that justice and law enforcement systems will continue to operate in a disaster. However, it needs also to suggest how to minimise disruption to these systems when there is a disaster. This is particularly important for women and girls wishing to report and seek protection from sexual and domestic violence from the police and courts. Some examples of measures to address this issue include mobile or specialized reporting mechanisms, investigation teams and courts. The Committee may wish to consider the feasibility of its recommendations where there is a large-scale disaster situation that severely disrupts the state organs.

#### **VI. Thematic areas of Concern**

##### **A. Health**

The draft General Recommendation refers to ‘gender-based differences in vulnerability to infectious and non-infectious diseases occurring in situations of disaster and as a result of climate change’.<sup>7</sup> The General Recommendation should spell out that some pandemics could constitute disasters, that climate change is affecting the distribution and severity of certain diseases, and that gender-based differences in vulnerability to disease may be the result of inequality, such as social expectations on women to be primary care-givers of children, the elderly and the sick. The role of health workers in identifying and responding to signs of sexual violence and related trauma should also be emphasised, with adequate training provided to health workers.

##### **I. Migration and forced displacement**

Ensuring a gender balance among police, military personnel and government officials who receive migrants and training them on the risk of sexual and gender-based violence facing migrants may assist states to meet their obligations under the Convention and General Recommendations 26 and 32.<sup>8</sup> Gender balance among disaster responders is desirable more generally.

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<sup>7</sup> Para 47(h).

<sup>8</sup> Para 68, page 21.

## **VII. Dissemination and Reporting**

While the suggestion is welcome for states to ‘regularly report’ on measures they have adopted to promote the human rights of women in disaster risk reduction, it is unclear to whom states should report and how often. Examples of state reporting could include as part of the Universal Periodic Review, to UN conferences on disaster risk reduction and reporting at a national level in accordance with relevant domestic law and policy. The Committee could also consider whether other fora could be created that would facilitate the exchange of information and best practices between states, humanitarian actors and civil society, and recognise a need for states and humanitarian actors to update gender-related plans, policies and strategies to reflect new research and practices and to respond to emerging challenges. It is important to include disaster risk reduction civil society organisations in cooperative networks listed in paragraph 70.

### **Issues not addressed by the draft General Recommendation**

#### ***Potential for disasters to improve status of women***

The draft General Recommendation rightly acknowledges the vulnerability of women and girls to disasters as ‘socially and culturally constructed and can, therefore, be changed’<sup>9</sup>. The General Recommendation should also acknowledge explicitly that vulnerability is not permanently located in a particular social group but varies with different disasters.<sup>10</sup> The General Recommendation should encourage states to view disasters as an opportunity to improve on the status quo and to take active steps to remove discriminatory laws. An example is the repeal and replacement of laws preventing widows from accessing title to land in Aceh following the 2004 Indian Ocean tsunami.

#### ***Shelter and prevention of violence post-disaster***

The draft General Recommendation notes the link between homelessness and increased threat of violence (paragraph 69) and the need for women to participate actively in ‘planning, implementing and monitoring housing and urban development programmes and policies, including in terms of emergency’ (paragraph 60 (c)). The Recommendation should spell out the link between inadequate housing and shelter (E Sustainable Urban Development) and increased risk of gender-based violence against women (H Gender-based violence against women), with participation in emergency housing planning an important means to achieve the aim of prevention of violence following disasters. This should include identifying risk factors for violence and taking measures to prevent violence as part of disaster planning and preparedness.

#### ***Non-state actors***

While the draft General Recommendation primarily addresses the obligations of states parties to CEDAW, it has the potential to influence other actors who are likely to be involved in disaster response and recovery, such as the IFRC, national societies, UN agencies, NGOs, faith-based groups and the private sector. The

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<sup>9</sup> Para 6.

<sup>10</sup> ILC Draft Articles Commentary to article 6, paras 7 and 9.

Committee could consider addressing those actors to recommend that they adopt a gender sensitive approach such as through a gender balance in relief personnel, for example. Reference to the work done by humanitarian organisations on gender in disasters<sup>11</sup> may also provide states with examples of best practice and guidelines that may translate many of the policies incorporated in this Recommendation into workable plans of action.

### ***Intersection with other rules of international law***

The draft General Recommendation should acknowledge the potential application of other rules of international law, such as when a disaster occurs in the context of armed conflict and international humanitarian law applies.<sup>12</sup> The Committee should also consider how the General Recommendation will interact with other CEDAW instruments and initiatives, as many of the issues that are highlighted in a disaster context reflect enduring, often structural, inequalities. It should also reiterate that measures to improve the position of women and girls should be taken in a 'normal' non-disaster context, and not restricted to emergency laws or procedures.

### **Terminology**

The draft General Recommendation uses the terms 'gender responsive' and 'gender sensitive'<sup>13</sup> without explaining the differences, if any, between these terms. It also refers to 'gender machineries' and 'women's machineries'<sup>14</sup> again without explaining the difference. There are several typographical errors and an error in the numbering of paragraphs.<sup>15</sup>

### **Expertise of authors:**

Dr **Gabrielle Simm** is Chancellor's Postdoctoral Research Fellow at the University of Technology Sydney, Faculty of Law, and a Visiting Fellow at the Australian Human Rights Centre, University of New South Wales Law. Her three year research project examines international disaster law in the Asia-Pacific region. She has also published on gender in peacekeeping and sexual violence in conflict. Gabrielle is a former diplomat and government lawyer advising on international law and has also worked as a refugee lawyer.

Dr **Sarah Williams** is an Associate Professor in the Faculty of Law and an Associate of the Australian Human Rights Centre at the University of New South Wales. Her research addresses international disaster law, international humanitarian law and international criminal law (with current projects addressing reparations for sexual and gender based violence). Sarah has also acted as a consultant to various humanitarian organisations.

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<sup>11</sup> Such as the International Federation of Red Cross and Red Crescent Societies, 'A Practical Guide to Gender-sensitive Approaches for Disaster Management'.

<sup>12</sup> See Draft Article 18.

<sup>13</sup> Paras 19, 37 cf paras 21, 38(a)

<sup>14</sup> Para 30 (d) cf para 41

<sup>15</sup> Page 21.